

Data protection: preparing for Brexit

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1. Understand your data flows.

As part of preparing for the General Data Protection Regulation 2016/679 coming into force in May 2018, your organisation will have carried out a data mapping exercise. If this is up-to-date then you will be able to use this to assess to what extent your organisation will be impacted by Brexit. Where this is not up-to-date then this is a good opportunity to review it and update it.

The key is to identify any data flows to and, more importantly, from countries in the EU. Even if you do not think information is being transferred you will need to carefully consider your data processing arrangements and any sub-processing arrangements.

After Brexit, countries in the EU who are transferring personal data to the UK will need to comply with the international transfer provisions in the GDPR, until an adequacy decision is made by the European Commission in respect of the UK. In most cases this will be by using the Standard Contractual clauses.

2. Consider whether the territorial scope provisions in Article 3 of the GDPR mean that your organisation will need to appoint an EU representative and, if so, take steps to identify and appoint an appropriate representative.

3. Understand what policies, procedures and other

documents may need revising following Brexit.

Regardless of the type of Brexit, the Data Protection Act 2018 will remain in force as this is domestic legislation. In terms of the GDPR, the Government has passed regulations that mean the GDPR will be incorporated directly into UK law (becoming the “UK GDPR”) and operating alongside the DPA 2018. If we Brexit with a ‘deal’ then there is likely to be a transition period where the GDPR will apply before we move to fully domestic arrangements. This may potentially allow for more detailed arrangements to be agreed to govern the transfer of data from the EU to the UK.

In any event, priority should be given to updating privacy notices and other data subject facing documents so that they can continue to understand how to exercise their data subject rights and to ensure you can continue to demonstrate compliance with your transparency obligations.

4.

Maintain a watching brief to ensure that you are aware of important developments and any new guidance that is published.

5.

Finally, the Information Commissioner’s Office has published guidance to assist organisations with preparing for Brexit, including recent guidance aimed at small and medium organisations. Being familiar with this guidance and following it where appropriate will help your organisation to prepare and ensure you can meet your accountability obligations under the GDPR.

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